

United States ¹²
Circuit Court of Appeals
For the Ninth Circuit

LOUIS BRANDAW, Guardian of the Estate and
Person of Charles E. Brandaw, an incompetent,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record

UPON WRIT OF ERROR TO THE UNITED STATES
DISTRICT COURT OF THE DISTRICT OF OREGON

FILED

MAR 4 - 1929

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit

LOUIS BRANDAW, Guardian of the Estate and
Person of Charles E. Brandaw, an incompetent,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record

UPON WRIT OF ERROR TO THE UNITED STATES
DISTRICT COURT OF THE DISTRICT OF OREGON



INDEX

	Page
Complaint -----	8
Answer -----	11
Reply -----	13
Verdict -----	14
Motion for New Trial-----	15
Order Denying Motion-----	16
Bill of Exceptions-----	16
Stipulation -----	25
Petition for Appeal-----	25
Assignment of Errors-----	26
Order Allowing Appeal-----	28
Undertaking on Appeal-----	28
Praecipe for Appeal-----	30
Stipulation -----	31

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

B. A. GREEN, 1003 Corbett Building, Portland,
Oregon, and E. J. McALEAR, Hillsboro, Oregon,
For the Plaintiff in Error.

GEORGE NEUNER, United States Attorney, and
FORREST LITTLEFIELD, Assistant United
States Attorney, old Post Office Building, Port-
land, Oregon,
For the Defendant in Error.

DISTRICT COURT OF THE UNITED STATES OF
AMERICA, DISTRICT OF OREGON

To George Neuner, United States Attorney for
District of Oregon, GREETINGS:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit, at San Francisco,
California, within thirty days from the date hereof,
pursuant to a notice of appeal filed in the Clerk's
Office of the District Court of the United States for
the District of Oregon, wherein Louis Brandaw,
Guardian of the Estate and Person of Charles E.
Brandaw, an incompetent, is appellant, and you are
appellee, to show cause, if any there be, why the
judgment in the said cause should not be corrected
and speedy justice should not be done to the parties
in that behalf.

GIVEN under my hand, at Portland, in said Dis-
trict, this 21st day of December, in the year of our
Lord, one thousand nine hundred and twenty-eight.

R. S. BEAN, Judge.

Service accepted December 21, 1928, by Forrest
E. Littlefield, Deputy United States Attorney.

In the District Court of the United States, for the
District of Oregon.

November Term, 1927

BE IT REMEMBERED, that on the 10th day of
November, 1927, there was duly filed in the District
Court of the United States for the District of Ore-
gon, a complaint, in words and figures as follows,
to-wit:

In the District Court of the United States, for the
District of Oregon.

LOUIS BRANDAW, Guardian of the Estate and
Person of Charles E. Brandaw, an incompetent,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action
against the defendant complains and alleges:

I.

That the plaintiff is now the duly appointed and
acting Guardian of the estate and person of Charles
E. Brandaw, his appointment having been made by
the Probate Court of the County of Washington,
State of Oregon, and said plaintiff now resides in
Washington County, in the State of Oregon, and said
Charles E. Brandaw resides in Washington County,
State of Oregon.

II.

That heretofore and upon the 25th day of August, 1918, said Charles E. Brandaw enlisted with the military forces of the United States of America and thereafter served in Company A, 76th Infantry, and thereafter upon the 21st day of October, 1918, was honorably discharged from said military forces.

III.

That while serving with the military forces of the United States of America said Charles E. Brandaw applied for and there was granted to him a policy of war risk insurance in the sum of Ten Thousand (\$10,000.00) Dollars conditioned upon the fact that in case said Charles E. Brandaw became totally and permanently disabled said defendant promised and agreed to pay to Charles E. Brandaw the sum of \$57.50 per month from the date of his permanent, total disability and continuing thru the same; and further conditioned that there should be paid to the beneficiaries named in said policy the sum of \$57.50 for a period of 240 months in case of the death of said Charles E. Brandaw; all in consideration of said Charles E. Brandaw paying to said government the stipulated premiums as provided for by law.

IV.

That said policy remained in full force and effect until said Charles E. Brandaw was discharged from the military forces on October 21, 1918, and for a thirty day grace period thereafter, and said Charles E. Brandaw was at the time of his discharge from the said military forces permanently and totally disabled, in that he was at that time unable to continu-

ously follow a substantially gainful occupation, and it was then reasonably certain that this condition would prevail thruout his life, in that he was then, now is and will ever be disabled on account of suffering from epilepsy.

V.

That this plaintiff for said estate has made claim of said defendant for the payment of the amounts due pursuant to the terms and conditions of said policy and said defendant has disagreed with said plaintiff and has failed and refused and now fails and refuses to pay to said plaintiff the sums due under said policy.

WHEREFORE, plaintiff prays for judgment order and decree of this court that said Charles E. Brandaw was upon the date of his discharge from the military forces of the United States permanently and totally disabled and that judgment be entered in favor of the plaintiff and against the defendant in the sum of Six Thousand Two Hundred Ten Dollars (\$6,210.00); and for plaintiff's costs and disbursements incurred herein.

HARE, McALEAR & PETERS,

B. A. GREEN,

Attorneys for the Plaintiff.

AND AFTERWARDS, to-wit: on the 16th day of January, 1928, there was duly filed in said court an answer, in words and figures as follows, to-wit:

[Title of Court and Cause.]

ANSWER

COMES NOW the United States of America, by George Neuner, United States Attorney for the District of Oregon, and J. N. Helgerson, Assistant United States Attorney, and for its answer to the amended complaint herein, admits, denies and alleges as follows:

I.

Answering the allegations in Paragraph I of plaintiff's complaint, the defendant herein neither admits nor denies the same, but prays that strict proof be required of the same.

II.

Answering the allegations in Paragraph II of plaintiff's complaint, the defendant admits the allegations of said Paragraph II.

III.

Answering the allegations in Paragraph III of plaintiff's complaint, the defendant admits that Charles E. Brandaw applied for and was granted war risk insurance in the amount of \$10,000, payable in 240 installments of \$57.50 per month in the event of death or permanent and total disability occurring while said insurance was in force, and the defendant hereby denies each and every other allegation con

tained in said Paragraph III, except the allegation herein expressly admitted.

IV.

Answering the allegations in Paragraph IV of plaintiff's complaint, the defendant admits that the said war risk insurance contract therein referred to was in force and effect at the time of plaintiff's discharge from the military forces of the defendant and the defendant hereby denies each and every other allegation contained in said Paragraph IV, except as expressly admitted herein.

V.

Answering the allegations in Paragraph V of plaintiff's complaint, the defendant denies the allegations of said Paragraph V, with the exception that it is admitted that a disagreement exists between the plaintiff and the United States Veterans Bureau relative to plaintiff's claim for said war risk insurance.

For a separate and further answer to the said complaint, the defendant herein alleges as follows:

I.

That plaintiff is barred from bringing this action by reason of the fact that plaintiff alleges in Paragraph II of said complaint that the said Charles E. Brandaw was honorably discharged from the military forces of the defendant on the 21st day of October, A. D. 1918, and further alleges in Paragraph IV of said complaint that at the time of his discharge said Charles E. Brandaw was permanently and totally disabled and therefore the date of the com-

mencement of this action was more than six years from the date that said Charles E. Brandaw was totally and permanently disabled.

WHEREFORE, defendant, having fully answered plaintiff's complaint, demands that plaintiff take nothing by this action and that the defendant recover of and from the plaintiff its costs and disbursements herein.

GEORGE NEUNER,
United States Attorney for the District of Oregon.

J. N. HELGERSON,
Assistant United States Attorney for Defendant.

AND AFTERWARDS, to-wit: on the 25th day of January, 1928, there was duly filed in said court a reply, in words and figures as follows, to-wit:

[Title of Court and Cause.]

REPLY

Comes now the plaintiff and for reply to the defendant's answer admits, denies and alleges:

I.

Denies each and every thing, allegation and matter in said answer and said further and separate answer contained, except as specifically alleged and set forth in plaintiff's complaint herein.

WHEREFORE, plaintiff having fully replied to defendant's answer, prays for judgment order and decree of this court that said Charles E. Brandaw was upon the date of his discharge from the military forces of the United States permanently and totally disabled, and that judgment be entered in favor of

the plaintiff and against the defendant in the sum of Six Thousand Two Hundred Ten (\$6,210.00) dollars; and for plaintiff's costs and disbursements incurred herein.

HARE, McALEAR & PETERS,
B. A. GREEN,
Attorneys for Plaintiff.

AND AFTERWARDS, to-wit: on September ²⁹28th, 1928, the same being the 66th judicial day of the regular July term of said Court,—Present, the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[Title of Court and Cause.]

RECORD OF VERDICT AND JUDGMENT

Now at this day come the plaintiff by Mr. B. A. Green of counsel, and the defendant by Mr. Forrest E. Littlefield, Assistant United States Attorney. Whereupon, the jury impaneled herein come into Court, answer to their names and return to the Court their duly sealed verdict, in words and figures as follows, viz:

“We, the jury duly impaneled to try the above entitled cause, do find for the defendant and against the plaintiff.

“Dated at Portland, Oregon, this 28th day of September, 1928.

LESTER D. KELLY, Foreman.”

which verdict is received by the Court and ordered to be filed.

WHEREUPON, on motion of defendant for judgment upon said verdict,

IT IS ADJUDGED that plaintiff take nothing by this action, and that defendant go hence without day, and that said defendant do have and recover of and from said plaintiff its costs and disbursements herein and have execution therefor.

WHEREUPON, on motion of plaintiff, IT IS ORDERED that said plaintiff be and is hereby allowed ten days from this date in which to file a motion for a new trial herein.

AND AFTERWARDS, to-wit: on the 5th day of October, 1928, there was duly filed in said court a motion for new trial in words and figures as follows, to-wit:

[Title of Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the plaintiff and moves this Honorable Court for a new trial on the ground and for the reason, as follows:

I.

Errors of the Court occurring during the trial and in the instructions.

II.

Refusal of the Court to give Instruction No. VII of the plaintiff, as requested or in substance.

Dated this 4th day of October, 1928.

B. A. GREEN,
Of Attorneys for Plaintiff.

AND AFTERWARDS, to-wit: on the 5th day of November, 1928, the same being the 1st judicial day of the regular November term of said court— Present, the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[Title of Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

This cause was heard by the Court on the motion for a new trial, and was argued by Mr. B. A. Green of counsel for plaintiff, and Mr. Forrest E. Littlefield, Assistant United States Attorney, upon consideration whereof, IT IS ORDERED that said motion be and the same is hereby denied.



AND AFTERWARDS, to-wit: on the 28th day of January, 1929, there was duly filed in said court a bill of exceptions in words and figures as follows, to-wit:

[Title of Court and Cause.]

BILL OF EXCEPTIONS

BE IT REMEMBERED that at the trial of this cause on the 28th day of September, 1928, the Honorable Robert S. Bean, Judge, presiding, the plaintiff appearing in person and by his attorneys, B. A. Green and E. J. McAlear, and the defendant appearing by Forrest E. Littlefield and William N. Rydalph, a jury was duly impaneled and the following proceedings were had:

I

Oscar Pfahl, the first witness produced on the

part of the plaintiff in his case in chief, upon direct examination testified in part as follows:

“Q. Do you know anything about this boy’s ability to work or carry on before he went to the army?”

A. Yes sir.

Q. What was that?

A. He would work around the farm just the same as any farm man would work.

Q. Was he strong, able-bodied, and husky?

A. Sure. He worked just as hard as any of the rest of the men out there.

Q. What work do you know of his having done subsequent to his discharge from the army?”

On cross examination, the witness testified in part as follows:

“Q. (By Mr. Littlefield): Mr. Pfahl, I believe you said that you had known Mr. Brandaw for about ten years and lived as neighbors there?”

A. Yes, sir.

Q. Do you know whether or not he had any of these spells or seizures prior to entering the service?

MR. GREEN. Just a moment. I want to object to that, Your Honor, as under the law this man was conclusively held to have been in good physical condition, except as to defects and infirmities noted on his enlistment record, and I want to object to any such introduction of testimony, because the government accepts these men and issues this contract to them and they are bound by this contract, and I think that law is quite conclusive.”

(Whereupon the matter was argued at length to the Court.)

“COURT: This contract, as I understand it, was an agreement on the part of the government that in case this soldier became totally and permanently disabled during the life of the contract it would pay him a certain sum of money. It is therefore incumbent upon the plaintiff to show that he did become totally and permanently disabled during the life of the contract, and unless it does so it certainly couldn't recover on this policy. I think it is competent for the government to show, if it can, that this trouble did not occur during the life of the contract. I don't understand that because the government accepted a man and issued a policy that it is to be conclusively presumed that the man was in sound health at the time the policy was issued so far as it bears upon his total and permanent disability. It must appear that he became totally and permanently disabled after the issuance of the policy, and I think this evidence is competent.

“MR. GREEN: The Court will allow an exception?”

Thereafter, the witness being interrogated testified that he had never heard of or seen any seizures which the plaintiff had prior to his entrance into the service.

II.

At the close of the testimony and before the argument of counsel, to the jury, plaintiff submitted to the court the following requested instruction:

“VII.

“You are instructed that under the law every enlisted man, or any other member employed in the active service under the war department or navy department, who was discharged prior to July 2, 1921, and who was in active service on or before November 11, 1918, shall be conclusively held and taken to have been in a sound condition when examined, accepted and enrolled for service, except as to defects, disorders and infirmities made of record in any manner by proper authorities of the United States at the time or prior to inception of active service. The law further provides that any ex-service man, who is shown to have had prior to January 1, 1925, a neuro-psychiatric disease, which developed a 10% degree of disability, shall be presumed to have acquired his disability in such service between April 6, 1917, and July 2, 1921, but said presumption shall be rebuttable by clear and convincing evidence. It is admitted that this man was suffering from neuro-psychiatric disease prior to January 1, 1925, and developed more than a 10% degree of disability from the date of his discharge and it is a question of fact for you to determine whether or not the presumption which the law provides has been rebutted in this case by clear and convincing evidence.”

After argument of counsel to the jury, the Court instructed the jury as follows:

“Now, Gentlemen of the Jury, this, as you very well know by this time, is an action on one of the war insurance contracts. It is alleged and admitted that Brandaw entered the military service of the United

States on or about the 25th of August, 1918, and that thereafter and while in the service he took out a war risk policy in the sum of Ten Thousand Dollars, in which the Government agreed that if he would pay a certain premium per month it would pay him a certain stipend each month in case he should be totally and permanently injured during the lifetime of the policy. He remained in the service until the 21st of October, when he was honorably discharged. The premiums were paid on his policy for the month of October, 1918, and that continued it in force until the 30th of November of that year.

“On his behalf it is alleged and claimed that while this policy was in force, that is, sometime prior to the 30th of November, 1918, he became permanently and totally disabled, and the sole question for you to determine is, under this evidence, whether prior to that date he did become permanently and totally disabled.

“Now the Veterans' Bureau and the courts have defined the term 'permanent and total disability' as being an impairment of mind or body which renders it impossible for a person to continuously follow a substantially gainful occupation, provided that it is reasonably certain that this impairment will continue throughout his life. To be permanently and totally disabled within the meaning of this policy does not necessarily mean that a person must be bedfast or bedridden, and any attempt to work with inability to work being present does not necessarily negative a condition of permanent and total disability. The essence of the requirement is whether or not the assured suffered such an impairment of mind

or body which prevented him from continuously following a substantially gainful occupation, conditioned upon circumstances which made it reasonably certain that this condition would prevail throughout his life.

“If Brandaw was totally and permanently disabled after the issuance of the policy and any time prior to November 30th, 1918, there was no lapse in the policy. Under this contract between the Government and the assured it was stipulated that this policy should continue in force so long as assured paid the premium, so that the mere fact that Brandaw was discharged from the army would not of itself void this policy. He still had a right after his discharge to keep it alive by paying the premiums but he did not do so, and therefore it lapsed under its terms in November of 1918, and it is not of any consequence so far as his rights are concerned or the rights of the parties are concerned how long Brandaw served in the army. This policy is not made dependent upon the length of service in the army, and therefore the fact that Brandaw served only two months or that he did not go overseas is wholly immaterial, because the contract between him and the Government is that after his enlistment and after the contract was issued, if he should become totally and permanently disabled at any time during the lifetime of the policy he would be entitled to recover.

“Now there has been a question raised in this case as to Brandaw’s condition at the time of his enlistment or the time that he was inducted into the army. I think it is fair to assume in the absence of evidence

to the contrary that he was at that time in good substantial health, because otherwise he would not have been inducted into the army, because they were looking for able and healthy young men, and when he was inducted into the army it is fair to assume that he was found to be in that condition, but if it should appear and you should believe from the testimony that prior to his induction into the army and prior to the issuance of the policy he was totally and permanently disabled so that he was not then able to continuously follow a gainful occupation it would necessarily follow that his disability could not have occurred after the issuance of the policy, and the Government would not be liable, because the terms and the conditions of the policy had not been broken, but if Brandaw had nothing more than what the doctors designated as a predisposition to a certain disease but it had not at that time developed so as to incapacitate him from continuously carrying on a gainful occupation, and after the issuance of the policy and while it was in force that disease developed to such an extent as to render him totally and permanently disabled it would be a violation of the terms of the policy and he would be entitled to recover. That is a question of fact for you to determine from the testimony in this case.

“There has been evidence here that Brandaw was receiving what is known as compensation from the Government, but that is a mere gratuity and has nothing whatever to do with the liability of the Government on these war risk contracts; it has no bearing on this case except so far as the rating given by the Bureau may assist in determining the extent and cause of his disability.

“I think that covers all the questions in this case, and it is a question of fact for you to say from the testimony whether you believe from a preponderance of the evidence that Brandaw became totally and permanently disabled or incapacitated during the lifetime of this policy. If you do think so, then you should find in favor of the plaintiff, and if you do not think so then you should find in favor of the Government. Swear the bailiffs, please.

(The bailiffs are sworn.)

“Now gentlemen, there are in this case two forms of verdict. One is in favor of the plaintiff, and if you find in his favor you will be kind enough to state in your verdict the date when you think he became permanently and totally disabled. If you do not think that he became totally and permanently disabled during the lifetime of the policy you will simply return a verdict in favor of the defendant. You may now retire.”

(Jury retires at 3:40 P. M.)

Whereupon, after the jury had retired, the following proceedings were had:

—“MR. GREEN: May it please the court, will the court grant me an exception to the refusal of the court to give requested instruction No. 7 in regard to the presumption.

THE COURT: Yes, I noted an exception.

MR. GREEN: Now, may it please the court there is one other question.

THE COURT: (Interrupting) I might say in reference to that exception—I don't know whether

it is available because it was not taken until after the jury retired.

MR. GREEN: I thought it was the practice not to make the exceptions in the presence of the jury.

THE COURT: Not in this court."

IT IS HEREBY CERTIFIED that the foregoing proceedings were had upon the trial in this cause and that this bill of exceptions contains all the evidence relative to or necessary to an understanding of the foregoing objections and exceptions.

IT IS FURTHER CERTIFIED that the foregoing exceptions in each case asked or taken by the plaintiff were allowed by the Court and that this bill of exceptions was duly presented and filed within the time fixed by law and the orders of this court and is by me duly allowed and signed this 28th day of January, 1929.

ROBERT S. BEAN,

One of the Judges of the District Court of the United States for the District of Oregon.

O. K.:

B. A. GREEN,

Of Attorneys for Plaintiff.

AND AFTERWARDS, to-wit: on the 13th day of February, 1929, there was duly filed in said court a stipulation, in words and figures as follows, to-wit:

[Title of Court and Cause.]

STIPULATION

It is stipulated by and between B. A. Green, of attorneys for Plaintiff in Error, and Forrest E. Littlefield, of attorneys for Defendant in Error, that the Bill of Exceptions as heretofore settled and certified in said cause may be deemed amended by inserting in paragraph 11, at the close of the requested instruction Number VII, the following: "instruction refused—exception allowed."

Dated February 13th, 1929.

B. A. GREEN,
Of Attorneys for Plaintiff in Error.

FORREST E. LITTLEFIELD,
Of Attorneys for Defendant in Error.

IT IS SO ORDERED.

Dated this 15th day of February, 1929.

R. S. BEAN, Judge.

AND on the 21st day of December, 1928, there was duly filed in said court a petition for appeal, in words and figures as follows, to-wit:

[Title of Court and Cause.]

PETITION FOR APPEAL

The above named plaintiff, Louis Brandaw, Guardian of the Estate and Person of Charles E. Brandaw, an incompetent, conceiving himself aggrieved by the judgment filed and entered September 29, 1928, in the above-entitled cause and proceeding,

does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, for the reason and upon the grounds specified in the Assignment of Error filed herewith, and prays that his appeal may be allowed, that a citation issue, as provided by law, and that a transcript of the records, proceedings, exhibits and papers, upon which said judgment was entered, as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California; and this plaintiff prays for an order fixing the bond, which plaintiff shall give to secure to defendant the payment of costs, if said plaintiff should fail to sustain his contention in said appeal.

Dated this 21st day of December, 1928.

B. A. GREEN,
Of Attorneys for Plaintiff.

21

AND AFTERWARDS, to-wit: on the ~~12~~th day of December, 1928, there was duly filed in said court an assignment of errors, in words and figures as follows, to-wit:

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

The above-named plaintiff files this, as his assignment of errors and contends that the trial court erred in the following particulars in the trial of said cause.

I.

Failure of the Court to give the plaintiff's requested instruction No. VII, as requested, which said instruction is as follows:

"You are instructed that under the law every enlisted man, or any other member employed in the active service under the war department or navy department, who was discharged prior to July 2, 1921, and who was in active service on or before November 11, 1918, shall be conclusively held and taken to have been in a sound condition when examined, accepted and enrolled for service, except as to defects, disorders and infirmities made of record in any manner by proper authorities of the United States at the time or prior to the inception of active service. The law further provides that any ex-service man, who is shown to have had prior to January 1, 1925, a neuro-psychiatric disease, which developed a 10% degree of disability shall be presumed to have acquired his disability in such service between April 6, 1917, and July 2, 1921, but said presumption shall be rebuttable by clear and convincing evidence. It is admitted that this man was suffering from a neuro-psychiatric disease prior to January 1, 1925, and developed more than a 10% degree of disability from the date of his discharge and it is a question of fact for you to determine whether or not the presumption which the law provides has been rebutted in this case by clear and convincing evidence."

Dated this 21st day of December, 1928.

B. A. GREEN,
E. J. McALEAR,
Attorneys for Plaintiff.

AND AFTERWARDS, to-wit: on December 21st, 1928, the same being the 35th Judicial Day of the regular November term of said court—Present, the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

Upon motion of the plaintiff appearing by his attorney, B. A. Green.

IT IS ORDERED that the appeal of the plaintiff above named be allowed, as prayed for by the plaintiff in said cause.

AND IT IS FURTHER ORDERED that the amount of the bond be fixed at the sum of Five Hundred (\$500.00) Dollars, as security for defendant's costs upon appeal.

AND IT IS SO ORDERED.

Dated this 21st day of December, 1928.

~~ROBERT~~ S. BEAN, Judge.

AND AFTERWARDS, to-wit: on the 21st day of December, 1928, there was duly filed in said court an Undertaking on Appeal, in words and figures as follows, to-wit:

[Title of Court and Cause.]

UNDERTAKING ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, that we, Louis Brandaw, Guardian of the Estate and

Person of Charles E. Brandaw, an incompetent, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the United States of America in the sum of ~~Two Hundred Fifty~~ ^{500.} (\$250.00) Dollars to be paid, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our heirs, executors and assigns.

WHEREAS, the plaintiff in the above-entitled cause has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the District Court of the United States, for the District of Oregon, which judgment was made and entered upon the 29th day of September, 1928, wherein and whereby Louis Brandaw, Guardian of the Estate and Person of Charles E. Brandaw, an incompetent, was plaintiff, and the United States of America was defendant.

NOW THEREFORE, the condition of this bond is such, that if the above plaintiff shall prosecute said appeal to effect and if plaintiff shall make good their plea and said judgment shall be reversed, then this obligation shall be void, otherwise to remain in full force and effect.

Dated this 21st day of December, 1928.

LOUIS BRANDAW, Guardian.
Principal.

NATIONAL SURETY COMPANY, a Corporation.
By ROBERT WHYTE, Surety.

The foregoing bond is hereby approved this ^{Atty. in fact} 21 day of December, 1928.

R. S. BEAN, Judge.

AND AFTERWARDS, to-wit: on the 21st day of December, 1928, there was duly filed in said court, a Praecipe for Appeal in words and figures as follows, to-wit:

[Title of Court and Cause.]

PRAECIPE FOR APPEAL

To G. H. MARSH, Clerk of the above entitled Court:

Will you kindly prepare and transmit to the Clerk of the Circuit Court of Appeals of the Ninth Circuit sitting at San Francisco, California, the following documents:

- a. Complaint.
- b. Answer.
- c. Reply.
- c-1. Judgment.
- d. Plaintiff's requested instruction No. VII.
- e. Motion for a new trial.
- f. Order denying motion for a new trial.
- g. Record on appeal.

Dated this 21st day of December, 1928.

B. A. GREEN,
Of Attorneys for Plaintiff.

AND AFTERWARDS, and on the 13th day of February, 1929, there was filed in said court and cause a stipulation, in words and figures as follows, to-wit:

[Title of Court and Cause.]

STIPULATION

It is stipulated by and between B. A. Green, of attorneys for plaintiff in error, and Forrest E. Littlefield, of attorneys for defendant in error, that in printing the Abstract of Record in said cause that all titles of papers, acceptance of service and verifications may be omitted, save and except that the complaint shall bear the title of said cause.

Dated this 13th day of February, 1929.

B. A. GREEN,
Of Attorneys for Plaintiff in Error.

FORREST E. LITTLEFIELD,
Of Attorneys for Defendant in Error.

